Attachment 3

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March 27, 1998

BY FACSIMILE AND U.S. MAIL

James Moose, Esq.
Remy, Thomas and Moose
455 Capitol Mall, Suite 210
Sacramento, CA 95814

RE: **Redwood Landfill; Revocation of Permission to Use Sludge Derived ADC on an Interim Basis**

Dear Mr. Moose:

Your letter of March 12, 1998 to Mark Riesenfeld has been forwarded to this office for response. Apparently your letter was written in response to a letter dated March 10, 1997 from Edward Stewart, Chief of Marin County Environmental Health Services in his capacity as the Local Enforcement Agency (LEA) of the California Integrated Waste Management Board to Redwood Landfill, Inc. (RLI).

The express intent of Mr. Stewart's March 10th letter was to put RLI on notice that the LEA has rescinded its permission for RLI to use sludge-derived alternative daily cover on an interim basis pending RLI's application for revision of its solid waste facilities permit (SWFP). The March 10th letter was not intended as a formal enforcement action. As such, the procedural steps outlined in Public Resources Code §§ 45000-45024 and California Code of Regulations Title 14, Article 4, were not followed. The letter was intended to give RLI the opportunity to voluntarily comply with the LEA's directive. Because the letter was not an "enforcement action", RLI is not entitled to a hearing panel under Public Resources Code § 44307 at this time. Thus, the LEA cannot accede to your request for such a hearing.

With regard to the other assertions in your letter of March 12, 1998, this reply is intended to serve as a general denial of each and every one. While the LEA does not intend to address every assertion contained in your March 12th letter, the main points of disagreement are discussed below.

On page three of your letter you cite the comment to Cal. Code Regs., Title 14, § 18304 which states: "A violation of a standard that does not also constitute a violation of a permit and

does not constitute an emergency hazard, pollution, or nuisance is not grounds for issuance of a cease and desist order or an order to clean up and abate." The next several pages are devoted to explaining why the use of sludge derived alternative daily cover (ADC) does not constitute a nuisance, hazard or emergency. Unfortunately, you miss the point. The LEA does not need to show the use of ADC constitutes a nuisance, hazard or emergency where the activity to be ceased is outside the scope of the existing SWFP, and thus, a violation of the permit.

While your letter tries to obfuscate the issue, the simple fact remains: RLI has no entitlement on the face of its current SWFP to use sludge-derived alternative daily cover, other than sludge processed through the alkaline stabilization (N-Viro) method, a method which has been abandoned by RLI. Absent permission from the LEA, RLI has no legal authority to continue using sludge derived ADC other than through the N-Viro method.

On page five (5) of your letter you appear to be arguing that the LEA has the authority to grant RLI permission to use ADC outside the scope of their SWFP, but no authority to rescind that permission. Clearly, such an argument is insupportable, and you cite no authority for it. Instead, you refer to a letter dated September 3, 1996 wherein the LEA granted RLI approval to use sludge-derived materials until such time as the revised SWFP is granted (attached as your Exhibit B).

Your letter overlooked language in the second paragraph of that letter which clearly states:

> "With the cessation of the demonstration project, continued use of biosolids ADC does not conform to the terms and conditions of Redwood Landfill's Solid Waste Facilities Permit (SWFP). However, as we have recently discussed, you are currently preparing an application to revise Redwood Landfill's SWFP. The forthcoming permit revision will incorporate the continued use of biosolids ADC as well as other changes in operation that have occurred at Redwood since the SWFP was issued last year (emphasis added). "

Your statement on page five that "a unilateral expectation, not communicated orally or in writing to a party seeking a permit or entitlement, cannot be a condition or such a permit or entitlement" has no meaning in this context. The understanding that approval for use of sludge derived ADC was only interim and that permit revision was imminent was communicated to RLI both orally and in writing on numerous occasions by LEA staff. The September 3, 1996 letter evidences the LEA's belief that as of that date RLI was "currently preparing an application to revise Redwood Landfill's SWFP." Furthermore, on October 22, 1996, Cynthia Barnard, a Senior Environmental Health Specialist with the LEA sent RLI another letter explicitly stating:

> "Successful completion of several alternative daily cover demonstration projects requires that the permit be revised to accommodate the continued use of these

products. Current use of these products was approved pending permit revision with the understanding that the process for permit revision was imminent." (Exhibit 1)

These letters stand as written proof that both parties understood an application for permit revision was imminent one and a half years ago. Any assertion by RLI to the contrary is belied by the written record.

The understanding that approval for use of sludge derived ADC was only interim and that permit revision was imminent was also communicated to RLI orally by LEA staff. The content of said discussions will be presented before the hearing panel, if need be, once an enforcement action is taken. Your suggestion that such an understanding was not in place is unsubstantiated.

Moreover, through its letter of September 3, 1996, the LEA did not grant RLI a permit or entitlement to use sludge derived ADC; it granted RLI interim approval pending application revision. Any financial investments made by RLI based on such interim approval were made at its own risk. Nothing in the language of the September 3, 1996 letter guarantees that the use of sludge derived ADC would ultimately be approved in the permit revision process.

Surprisingly, on page seven, you purport to tell the LEA what its own expectations were at a point in time when you were not involved in the discussions. You further assert that the permit revision process has, in fact, begun. These assertions are completely insupportable. At this point, the LEA is waiting for the submittal of an application for permit revision. There is currently no application for permit revision pending.

On January 9, 1998, RLI did submit an incomplete application to "modify" its SWFP. The LEA declined to accept the incomplete application, as is well within its rights under the law. In its incomplete application submittal, RLI represented that it would submit the balance of the application package on March 1, 1998. (Exhibit 2). To date, the documents have never been received. On March 23, 1998, the LEA sent a letter to Bob Bernicchi, RLI's technical consultant, inquiring as to when the application for revision would be submitted (Exhibit 3).

With regard to your many references to the California Integrated Waste Management Board's (CIWMB) positive stance towards ADC materials, such references may be useful to the extent that they reflect upon the likelihood that use of sludge-derived ADC will be approved once that activity is included in RLI's application for permit revision. However, CIWMB's conceptual approval of ADC as a product has no bearing on whether RLI currently has approval to use sludge derived ADC.

You also stated in reference to environmental review under CEQA that Redwood has submitted an enormous amount of material in connection with its proposed formal SWFP revision. Again, let me remind you, there is no application for permit revision pending.

In addition, once the application for permit revision is submitted, the LEA will have thirty (30) days to determine whether further environmental review is necessary. The LEA makes no representation at this time to what extent environmental review is necessary. That RLI received a categorical exemption for its demonstration project using sludge derived ADC has no bearing on the scope of environmental review during the permit revision process. Nor does the Laurel Heights II case you cited even purport to address this issue.

Moreover, while Redwood may have believed that the demonstration project in 1996 was exempt from CEQA, it certainly did not believe that the activities of air drying sludge and use of sludge derived ADC were exempt from CEQA review entirely. Any assertion to the contrary is belied by a series of correspondence between RLI and the LEA. In a letter to RLI's site manager, Doug Diemer, dated January 22, 1997, the LEA states:

> "RLI, as the applicant is seeking to amend the Solid Waste Facility Permit (SWFP) to incorporate new sludge management operations, and to recognize the suspension of the alkaline stabilization process, the on-site composting operation, leasehold changes and changes to the leachate collection and removal system. It was determined by CDA staff that environmental review is both appropriate and essential for the proposed changes." (Exhibit 4)

The letter also requested that RLI resubmit an accurate project description which completely describes all the existing and proposed changes to the project. Thus far, RLI has failed to do so.

On February 7, 1997, RLI sent a letter to Ed Stewart. In the last paragraph of the first page of the letter, RLI explicitly acknowledges:

> "Redwood has submitted information to your office regarding the proposed alternative sludge processing methodologies and site operational and use changes (December 10, 1996). The proposed changes were discussed during a meeting with Marin County Planning, the Department of Environmental Health Services (DEHS), and the State of California Integrated Waste Management Board (CIWMB) (January 8, 1997). Based on the opinions of the Marin County Planning Department and the DEHS, some of the proposed operational practices, processing methods, or site use changes represent significant enough change to warrant additional documentation, peer review and formal environmental review." (Exhibit 5)

On page two of its February 7th letter, RLI makes the representation that "Redwood is prepared to convert its December, 1996 application for modification to its Solid Waste Facilities Permit to an application for a permit revision, in order to seek appropriate agency and public review (including appropriate CEQA review) and approval of its proposed changes to the SWFP."

Finally, in a letter from Deborah Bialosky, Deputy County Counsel, to Doug Diemer dated March 14, 1997, this office made it perfectly clear that all of the sludge processing and sludge derived ADC activities described by RLI in its letter of February 7, 1997 were subject to environmental review. **(Exhibit 6)**

In summary, let me reiterate: **RLI never had a legal entitlement to use any sludge-derived ADC, except for sludge processed through the alkaline stabilization (N-Viro) method. Upon receipt of Mr. Stewart's letter of March 10, 1998, RLI has no interim permission to continue using sludge-derived ADC. RLI must discontinue use until the process for permit revision has been completed and a revised SWFP issued. Any continued use of sludge-derived ADC will trigger an enforcement action by the LEA.**

Finally, in an attempt to reach a reasonable resolution to the issues discussed above, the Local Enforcement Agency agrees to attend a meeting as requested in your voice mail message to me last week. We request that you contact our office within two weeks of receipt of this letter to schedule a meeting date and time.

Very truly yours,

Patrick K. Faulkner

PATRICK K. FAULKNER
COUNTY COUNSEL

DAB/jb
Attachments
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cc. (w/o attachments)
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Duane Woods, RLI
Douglas Diemer, RLI
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